

REMARKS

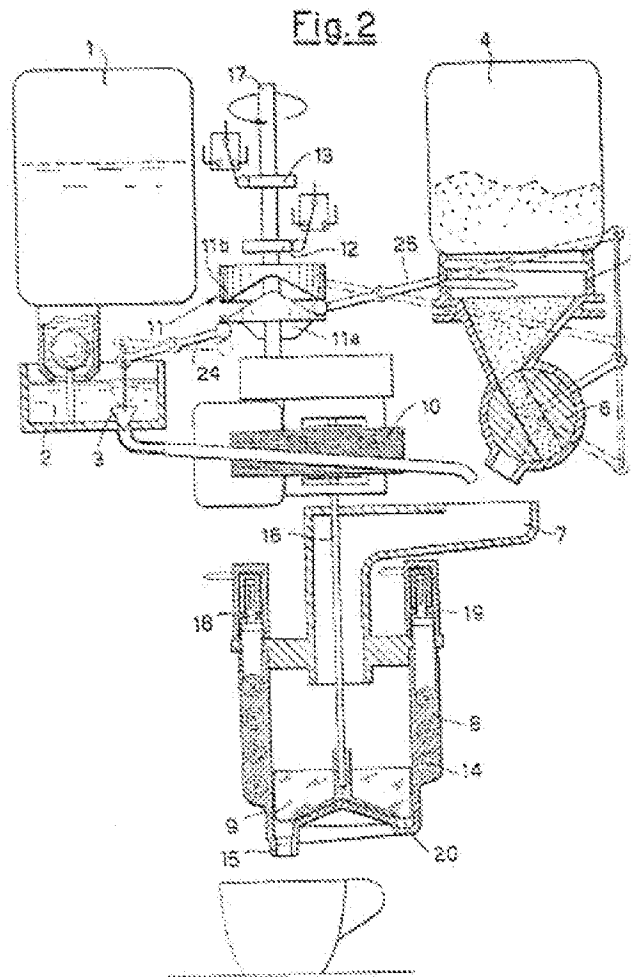
Applicants kindly thank Examiner Kaufman for agreeing to allow Applicants to change their election of subspecies X to subspecies Y, in a telephone message to the undersigned attorney on April 19, 2007. Thus, Applicants now elect Group 1, Species D, Subspecies X, without traverse. Applicants submit that claims 1-2, 6-8, 19, 20, 23-26, 34-39, and 41-51, as originally filed, read on the elected group, species, and subspecies. This election is reflected in the claim set provided above.

In response to the office action dated November 30, 2006, Applicants amended claims 1, 6, 7, 19, 20, 23, 26, and 43, cancelled claim 42, and added new claims 69-72. Claims 1, 2, 6-8, 19, 20, 23-26, 34-39, 41-51, and 69-72 are presented for examination.

Claim Rejections — 35 U.S.C. § 102

Claims 1, 2, 6, 19, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by DiGirolamo (U.S. Patent No. 4,357,861). However, DiGirolamo does not disclose or suggest a beverage mixer and dispenser that includes a mixing chamber inside of a housing and a feed opening exposed at an exterior surface of the housing, the feed opening leading through the housing to the mixing chamber to allow the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and dispenser, as required by claims 1, 2, 6, 19, and 20.

DiGirolamo describes an automated machine that sequentially carries out the steps of metering a liquid and a soluble product and stirring the liquid and soluble product to produce a beverage, and then discharging the beverage. (See, e.g., DiGirolamo, col. 1, lines 6-14). Referring to DiGirolamo's Figure 2, which is reproduced below, DiGirolamo's device includes a water tank 1 and a soluble powder container 4. During use, water and soluble powder are transferred from tank 1 and container 4, respectively, to treatment chamber 8 via a feeding manifold 7. The water and soluble powder are mixed within treatment chamber 8 to form a beverage.



DiGirolamo's device is not described as having a mixing chamber inside of a housing, let alone a feed opening exposed at an exterior surface of the housing, where the feed opening leads through the housing to the mixing chamber to allow the addition of drink additives (or a soluble substance) from outside the beverage mixer and dispenser. In the office action, the Examiner did not indicate which element(s) of DiGirolamo's device correspond(s) to Applicants' claimed housing. Rather, the Examiner merely contended that "[s]ince DiGirolamo has a mixing chamber and an extract container, it has the same housing as defined in applicant's claims." However, Applicants' claims, as amended, recite that the mixing chamber is inside of the housing. DiGirolamo neither discloses nor suggests such an arrangement. Moreover, even the portions of DiGirolamo's device that define the container 4 and chamber 8 could be considered a housing, which Applicants' do not concede, the resulting housing would not include a feed

opening exposed at an exterior surface of the housing. Nor does DiGirolamo disclose or suggest that drink additives (or a soluble substance) can be added to his mixing chamber through his feeding manifold 7. Such a use would contradict DiGirolamo's stated objective of providing an automatically operated machine. (See, e.g., DiGirolamo, col. 1, lines 6-14). This is not merely a trivial distinction. As Applicants explained in their specification, by exposing the feed opening at an exterior surface of the housing, the user can conveniently add any of various different additives or substances to the mixed beverage without requiring multiple different additional containers for holding those additives and substances. (See, e.g., Application, p. 2, lines 9-20).

In view of the foregoing discussion, Applicants request reconsideration and withdrawal of the rejection of claims 1, 2, 6, 19, and 20.

Claim Rejections — 35 U.S.C. § 103

Claims 1, 2, 6-8, 19, 20, 23-26, 34-41, 44-46, and 48-51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Militello (DE 200 06 115) in view of Ogawa (U.S. Patent No. 4,191,101) and Swier (U.S. Patent No. 5,740,946).

Claims 1, 2, 6-8, 19, and 20 cover beverage mixers and dispensers that include a mixing chamber inside of a housing and a feed opening exposed at an exterior surface of the housing, the feed opening leading through the housing to the mixing chamber to allow the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and dispenser. Militello, Ogawa, and Swier, taken alone and in combination, fail to disclose or suggest each and every limitation of Applicants' claims 1, 2, 6-8, 19, and 20.

Militello describes an apparatus including an extract container 2, a water container 3, and a metering device 4 for the extract. The apparatus further includes a mixing chamber 9 that is positioned below the extract container 2.

Ogawa describes an apparatus for preparing hot drink including a powder measuring device 14 for measuring a predetermined amount of powder from a hopper 33 and a tank 1 connected to a pipe 28 for delivering hot water to a cup 21. (See, e.g., Ogawa, col. 6, lines 47 – col. 7, line 10; Fig. 3). After delivering hot water from the tank 1 to the cup 21, the apparatus feeds a predetermined amount of powder from the powder measuring device 14 into the cup 21, thereby preparing the hot drink in the cup. (See, e.g., *id.*).

Swier describes a machine for dispensing hot beverages. (See, e.g., Swier, col. 1, lines 5-10). The machine includes a beverage dispensing device 2 for dispensing a hot beverage and an additive dispensing device 38 for dispensing an additive to be added to the hot beverage. (See, e.g., Swier, col. 2, lines 55-57 and col. 3, lines 13-18) A control device 52 controls the beverage dispensing device 2 and the additive dispensing device 38. (See, e.g., Swier, col. 3, lines 31-33).

The Examiner contended that it would have been obvious to a person of ordinary skill in the art to use hopper 33 of Ogawa with Militello's device to add additives to Militello's hot drink mix. However, a person of ordinary skill in the art would not have been motivated to combine the teachings of Ogawa and Militello. While Militello is directed to preparing a hot beverage in a mixing chamber, Ogawa is directed to preparing a hot drink in a drinking cup. Ogawa explicitly teaches away from the use of a mixing chamber in which powder and water are mixed prior to being poured into a drinking cup. According to Ogawa, for example, eliminating a mixing chamber allows better control of drink quality and minimizes bacteria growth. (See, e.g., col. 5, lines 61-68). Moreover, the portion of Ogawa's device that the Examiner contended was a "feed opening" leads into a drinking cup, not a mixing chamber. Nor is there any indication in Ogawa that it would be beneficial for the portion of Ogawa's device that the Examiner contended was a "feed opening" to lead to a mixing chamber. In fact, Ogawa does not even disclose a mixing chamber. As discussed above, Ogawa teaches away from the use of a mixing chamber in addition to a drinking cup. Therefore, a person of ordinary skill in the art would have been deterred from combining the teachings of Ogawa and Militello, as suggested by the Examiner.

Moreover, even if the teachings of Ogawa and Militello were combined, the resulting device would not include a mixing chamber inside of a housing and a feed opening exposed at an exterior surface of the housing, the feed opening leading through the housing to the mixing chamber to allow the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and dispenser, as recited in Applicants' claims 1, 2, and 6-8. As acknowledged by the Examiner, Militello lacks these features. Ogawa also lacks these features. Ogawa fails to disclose or suggest a mixing chamber inside of a housing, let alone a feed opening exposed at an exterior surface of the housing, which allows the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and

dispenser. Rather, as discussed above, Ogawa's device is designed to separately deliver hot water and a powder to a drinking cup to produce a beverage in the cup.

Swier similarly fails to disclose or suggest a feed opening exposed at an exterior surface of the housing, the feed opening leading through the housing to the mixing chamber to allow the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and dispenser, as recited in Applicants' claims 1, 2, and 6-8. Swier fails to disclose a mixing chamber inside of a housing, much less a feed opening exposed at an exterior surface of the housing, which allows the addition of drink additives (or a soluble substance) to the mixing chamber from outside of the beverage mixer and dispenser. Swier discloses a liquid-tight apparatus that is flushed with base beverage to remove additives left behind in the device. (See, e.g., Swier, col. 2, lines 14-32 and col. 4, lines 39-46). The liquid-tight integrity and, thus, the desired operation of the apparatus of Swier would be compromised by the addition of a feed opening exposed at an exterior surface and leading into a mixing chamber.

Applicants' claims 23-26, 34-39, 41, 44-46, and 48-51 cover beverage mixers and dispensers that include a first cream rotor that is "approximately cup-shaped in a non-rotating state, the circumferential edge of the first cream rotor abutting against a dividing wall between the mixing chamber and the cream chamber, thereby creating a seal between the mixing chamber and the cream chamber, and, wherein, in a rotating state, the first cream rotor flattens under centripetal force." Applicants' claim 40 has been withdrawn. As discussed above, a person of ordinary skill in the art would not have been motivated to combine the teachings of Militello, Ogawa, and Swier. Moreover, Militello, Ogawa, and Swier, taken alone and in combination, fail to disclose or suggest a cream rotor of the construction recited in Applicants' claims 23-26, 34-41, 44-46, and 48-51. Thus, even if those references were combined, the resulting device would not include each and every feature of Applicants' claims 1, 2, 6-8, 19, 20, 23-26, 34-39, 41, 44-46, and 48-51. Therefore, Applicants request reconsideration and withdrawal of the rejection of claims 1, 2, 6-8, 19, 20, 23-26, 34-41, 44-46, and 48-51.


The fees in the amount of \$150 for excess claims and \$450 for the Petition for Extension of Time are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization.

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Respectfully submitted,

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